

## § 751.28

to the liable third party. More than one demand packet should be prepared when more than one party is deemed to be liable. Do not use original documents. Demand packets should be mailed in official DON envelopes. No demand packet should be prepared for claim files that have been closed or when potential recovery is \$25.00 or less. In those cases the outside of file folders in the upper left-hand corner should be marked "CLOSED." A demand packet will include the following:

(1) DD Form 1843, Demand on Carrier/Contractor;

(2) DD Form 1844, Schedule of Property and Claim Analysis Chart;

(3) DD Form 1841, Government Inspection Report (if available);

(4) DD Form 1164, Service Order for Personal Property (when applicable);

(5) Copies of all repair estimates (translated from foreign languages); and

(6) Copies of all other supporting documents deemed appropriate.

(b) *Dispatch of demand packets.* (1) The demand packets are directly dispatched by the appropriate personal property office or the Naval Legal Service Office to the third party.

(2) *Privately Owned Vehicles (POV's).* Demands for loss or damage to POV's will not be made directly against ocean carriers operating under contract with the MSC. After payment is made to the claimant, one copy of the complete claim file will be forwarded directly to Commander, MSC. Each file shall include the following:

(i) The payment voucher;

(ii) The completed personnel claim forms;

(iii) The estimated or actual cost of repair;

(iv) A document indicating the conditions of the items upon delivery to the carrier; and

(v) a document indicating the forwarding condition of the POV upon its return to Government control.

The letter of transmittal should identify the vessel by name, number, and if available, the sailing date.

## 32 CFR Ch. VI (7-1-03 Edition)

### § 751.28 Assignment of claimants rights to the government.

The claimant shall assign to the Government, to the extent of any payment made on the claim, all rights and interest the claimant may have against any contractor, carrier, or insurer or other party arising out of the incident on which the claim is based. The claimant shall also furnish such evidence as may be required to enable the Government to enforce its claim. If the claimant refuses to cooperate, steps may be taken to ensure return of monies paid on the item which the Government is trying to collect.

### § 751.29 Recoveries from carrier, contractor, or insurer.

(a) *Recoveries.* If a claimant receives payment from the Government under this instruction and also receives compensation from a carrier, contractor, or insurer for the same loss, the Government shall collect from the claimant the amount necessary to prevent the claimant from being compensated twice for the same loss. If the amount payable on a claim is less than the adjudicated value of the claim, excess recoveries from carriers, and other third parties shall be paid to the member as long as the total amount paid does not exceed the value of the claim as adjudicated.

(b) *Recovered property.* When lost property is found, the claimant may, at his option, accept all or part of the property and return the full payment or a pro-rated share of the payment received from the Government on the claim for the recovered property. Surrendered property shall be disposed of under applicable salvage and disposal procedures.

### § 751.30 Settlement procedures and third party responses.

(a) *Settlement procedures.* In the interest of expeditious office administration, correspondence to carriers and contractors should be kept to a minimum. Normally, one rebuttal to a third party's denial of liability is sufficient, unless the carrier or contractor raises new arguments or provides new information.

(1) *Checks from third parties.* Accept checks for the amount demanded from

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carriers and contractors. If a carrier or contractor forwards a check for less than the amount demanded, review the carrier's arguments for reducing liability to determine if they are acceptable. If the third party's basis for reducing liability is acceptable in the light of all evidence, deposit the check and dispatch the unearned freight letter, if applicable. Mark the front upper left-hand corner of the file as "CLOSED."

(2) *Third party offers of settlement.* If a carrier or contractor offers to settle the claim, review the carrier's arguments for reducing liability to determine if they are acceptable. If the third party's basis for reducing liability is acceptable in light of all evidence, inform the carrier that the offer is accepted, but that offset action will be initiated if a check for that amount is not received within 45 days. If a check in the amount acceptable to the Government is received, deposit it and dispatch the unearned freight letter, if applicable. Mark the front upper left-hand corner of the file as "CLOSED." If a check in the proper amount is not received within 45 days, send the request to NAVMTO, Norfolk (or appropriate contract officer) for offset action (see § 751.32 of this part).

(3) *Unacceptable third party checks and offers of settlement.* If a third party's basis for denying liability is not valid, respond to that carrier or contractor. Return unacceptable checks. Explain the reasons for not accepting the check or offer, and request the amount that is justified under the circumstances in the light of all the evidence. If a release was included, amend the release to the revised amount and sign, date, witness, and return it. Warn the carrier or contractor that the claim will be forwarded for offset action if a check for the amount justified under the circumstances is not received within 45 days. Suspend the file for 45 days and if a check in the proper amount is received, deposit it and dispatch the unearned freight letter, if applicable. If a check in the proper amount is not received within 45 days, request NAVMTO, Norfolk (or appropriate contract officer) to take offset action.

(4) *Third party denials of liability.* Upon receipt, review the carrier or con-

tractor's basis for denying liability in the light of all the evidence.

(i) *Acceptable third party reasons for denial.* Mark the front upper left-hand corner of such files as "CLOSED."

(ii) *Partially acceptable and unacceptable third party reasons for denial.* If the carrier or contractor's basis for denying liability is acceptable only in part or is completely unacceptable, follow the procedures in subparagraph (3) above, requesting the amount that is justified under the circumstances in the light of all the evidence. If a response is not received within 45 days, or if the third party's reply is not responsive, request NAVMTO, Norfolk (or appropriate contract officer) take offset action as described above.

(b) *Depreciation.* In determining payments to claimants, the depreciation rates from the Allowance List—Depreciation Guide are used. In determining third party liability, however, a different depreciation guide, the Joint Military/Industry Depreciation Guide is used instead. In most instances, the depreciation rates are the same in both guides, and claims personnel are not required to consult the Joint Military/Industry Depreciation Guide or alter the depreciation taken on items prior to dispatching demands. If, however, a carrier or contractor objects to the depreciation rate utilized for certain items, consult the Joint Military/Industry Depreciation Guide and use the depreciation rate found in that guide if it differs from the rate in the Allowance List—Depreciation Guide.

### § 751.31 Common reasons for denial by carrier or contractor.

The following are common reasons given for denial of an entire claim, or for individual items on a claim. Each reason for denial is followed by a short discussion of the validity of such a denial.

(a) *The carrier alleges that valid exceptions were made at the time of pickup from the NTS facility.* When a carrier provides an exception sheet it contends was made at time of transfer, this exception sheet must bear the signature of a representative of the NTS facility. Without a signed exception sheet there is no evidence that the NTS facility was made aware of these exceptions